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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/210,490	12/11/98	WEAVER	E P03592US0

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ZARLEY MCKEE THOMTE VOORHEE & SEEASE
801 GRAND AVENUE
SUITE 3200
DES MOINES IA 50309

EXAMINER

EWOLDT, G

ART UNIT	PAPER NUMBER
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1644

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DATE MAILED: 03/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/210,490

Applicant(s)
Weaver et al.

Examiner
Gerald Ewoldt

Group Art Unit
1644



☒ Responsive to communication(s) filed on Feb 14, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 10-12, 14, and 22-31 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 10-12, 14, and 22-31 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. Applicant's amendment, filed 2/14/2000, is acknowledged.
Claim 13 is canceled.
Claims 10-12, 14 and 22-31 are pending.
2. In view of Applicant's amendment, filed 2/14/2000, the rejection of claim 23 under 35 U.S.C. § 112, first paragraph, rejections of claims 10, 12, 22-29, and 31 under 35 U.S.C. § 102(b), and the rejections of claims 10-14 and 22-31 under 35 U.S.C. § 103(a) are hereby withdrawn.
3. The following rejections are necessitated by the amendment filed 2/14/00.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention.
5. Claim 14 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 14 is incomplete as being dependent on canceled claim 13.
6. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
7. Claims 10-12, 14, and 22-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stott et al. (U.S. Patent No. 4,816,252, IDS) in view of Watanabe (Japan Patent No. 61-132143, IDS) and Elliot et al. (U.S. Patent No. 4,623,541, IDS), all of record.

The '252 patent teaches a method of improving weight gain and growth, while decreasing morbidity and mortality in animals comprising: administering a water soluble supplement to an animal post-weaning, said supplement comprising a water stable globulin concentrate (see particularly columns 4 and 24-25).

The '252 patent does not teach the addition of said supplement to the animal's water source (claims 10-12, 14, and 22-31), the use of said supplement in specific concentrations (claims 11 and 22-25), the use of said supplement with pigs (claims 12, 14, and 28-30), and the addition of one or more additives or nutrients (claims 26-27).

Watanabe teaches the use immunoglobulin feed supplements to promote weight gain in pigs (see particularly Abstract).

The '541 patent teaches the use of blood-derived immunoglobulins in a liquid feed source that provides for both immunological protection and increased weight gain in piglets (see particularly Example 1 and Biological (Animal) Test) in concentrations encompassing the claimed limitations of "about 0.375 to about 3% globulin concentrate", "about 0.1-0.75% concentration of IgG", and "a dose of 0.5 immunoglobulin/hd/day or more", and including additives and nutrients (see particularly Examples 1 and 2 and Table 1).

From the teachings of the references it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use a water soluble immunoglobulin supplement, as taught by the '252 patent, in a method of improving weight gain and growth in pigs (including underweight pigs), as taught by Watanabe, in various concentrations and including additives or nutrients, as taught by the '541 patent. One of ordinary skill in the art at the time the invention was made would have been motivated to combine the teachings in a method of providing continuous immunity (post-weaning) as the immunoglobulins could attack pathogens in the digestive system in younger or older animals, as taught by the '252 patent. Additionally, one of ordinary skill in the art at the time the invention was made would have been motivated to add the water stable supplement to the water source (Claims 10 and 31) of any animal population to provide for passive immunity and nourishment, including animals that might not have been consuming solid feed and whose only intake was water.

8. Applicant's arguments filed 2/14/00 have been fully considered but they are not persuasive. Applicant argues that the rejection under 35 U.S.C. § 103(a) should be withdrawn as, in view of *in re Fine*, *ex parte Levengood*, *in re Ehrreich*, and *in re Fritch*, the invention is not obvious. Applicant argues that the invention is patentable in that the water stable globulin concentrate is given to animals through their water source post-weaning (emphasis by Applicant) and several benefits of the method are set forth. Applicant continues with an argument that the primary reference, the '252 patent, teaches away from the claimed invention and that the secondary references, Watanabe and the '541 patent, merely teach the use of immunoglobulins as feed supplements.

9. It is the Examiner's opinion that the claimed invention is obvious in view of the cited case law, that the Examiner has established such, and that the motivation for said invention was provided by the prior art and not Applicant's disclosure. While the '252 patent teaches that *colostrum* consumption may have little effect after 24 hours, it *specifically* teaches that an immunoglobulin product "could also be used on a continuous basis as a food supplement for a calf, a mature cow, or any other animal," (column 24, paragraph 3). This would include post-weaning pigs. The Watanabe reference teaches the use of immunoglobulin supplements in pigs and the '541 patent teaches the use of an immunoglobulin supplement in the claimed dosages/concentrations. It is the opinion of the Examiner that the administration of a water soluble substance in an animal's water source is *prima facie* obvious given the knowledge generally available to one of ordinary skill in the art, and thus the entire claimed invention, including all the claimed limitations, have been taught or suggested by the prior art.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. No claim is allowed.

12. Any inquiry concerning this communication or earlier communications should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The Examiner can normally be reached Monday through Friday from 8:00 am to 5:00 pm. A message may be left on the Examiner's voice mail service. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Serial No. 09/210490
Art Unit 1644

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Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Gerald Ewoldt, Ph.D.
Patent Examiner
Group 1640
Technology Center 1600
March 6, 2000

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